

Coordination between the EPA and ACOE on 404 Permit Review

General 404 Background: The Clean Water Act Section 404(q): Memorandum of Agreement between the Environmental Protection Agency and the Department of the Army established policies and procedures for coordination on 404 regulatory issues and permit reviews. The roles and responsibilities of the Federal resource agencies are:

- **U.S. Army Corps of Engineers:** The Army Corps of Engineers is solely responsible for making final permit decisions. As such, the Corps acts as the project manager for the evaluation of all permit applications. As the project manager, the Corps is responsible for requesting and evaluating information concerning all permit applications. The Corps fully considers EPA's comments when determining with the National Environmental Policy Act, and other relevant statutes, regulations, and policies. The Corps will also fully consider the EPA's views when determining whether to issue the permit, to issue the permit with conditions and/or mitigation, or to deny the permit.
 - Administers day-to-day program, including individual and general permit decisions;
 - Conducts or verifies jurisdictional determinations;
 - Develops policy and guidance; and
 - Enforces Section 404 permit provisions.
- **U.S. Environmental Protection Agency:** Through the Clean Water Act, National Environmental Policy Act, and other relevant statutes, EPA has a role in the Department of the Army Regulatory Program. Pursuant to its authority, the EPA may provide comments to the Corps identifying its views regarding compliance with the Section 404(b)(1) Guidelines.
 - Develops and interprets policy, guidance, and environmental criteria used in evaluating permit applications;
 - Determines scope of geographic jurisdiction and applicability of exemptions;
 - Approves and oversees State and Tribal assumption;
 - Reviews and comments on individual permit applications;
 - Has authority to prohibit, deny, or restrict the use of any defined area as a disposal site (Section 404(c));
 - Can elevate specific cases (Section 404(q));
 - Enforces Section 404 provisions.
- **U.S. Fish and Wildlife Service and National Marine Fisheries Service:**
 - Evaluate impacts on fish and wildlife of all new Federal projects and Federally permitted projects, including projects subject to the requirements of Section 404 (pursuant to the Fish and Wildlife Coordination Act); and
 - Elevate specific cases or policy issues pursuant to Section 404(q).

Region 4 Specific Background: In the Southeast, the ACOE generally looks to EPA Region 4's environmental expertise on 404 permits, particularly for projects that are anticipated to have a significant environmental impact. Region 4 places a high priority on building and maintaining very good relationships with the ACOE and providing timely and constructive comments on the permit applications that we review. Although the Region has not recently issued an "a" or "b" letter, which are part of the process under the Section 404(q) MOA, we strive to screen at least 95% of the permit applications that we receive and provide comments to the ACOE on a subset of permit applications where we know we can add value. Of the nearly 600-700 public notices that we typically receive annually in Region 4, we provide comments on approximately 5%.